

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RITA J. GARCIA,

Plaintiff,

v.

No. CIV 04-827 WJ/DJS

LUNA COMMUNITY COLLEGE, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER GRANTING
DEFENDANTS' MOTION TO STRIKE EXHIBITS A THROUGH F
AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court pursuant to School Defendants and Defendant Fry's Motion to Strike Exhibits A Through F of Plaintiff's Motion for Summary Judgment [Docket No. 40] and Plaintiff's Motion for Summary Judgment [Docket No. 32]. Having reviewed the submissions the parties and the relevant law, I find that Defendants' motion is well taken and will be granted, and Plaintiff's motion will be denied because disputed issues of material fact preclude summary judgment.

Exhibits A through F, attached to Plaintiff's Motion for Summary Judgment, are copies of letters that Plaintiff allegedly sent to various of the Defendants prior to filing this action. These letters are not accompanied by an affidavit or any other form of verification or authentication. Rule 56(a) of the Federal Rules of Civil Procedure permits a party seeking to recover on a claim to move for summary judgment with or without supporting affidavits. The movant bears the initial burden of showing that there is no genuine issue as to any material fact and that she is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). This showing is made by reference

to the record in the case including pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits. Fed. R. Civ. P. 56(c). Thus, while a movant need not submit affidavits or other evidence, the record as it exists without submissions must support the movant's contention that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law.

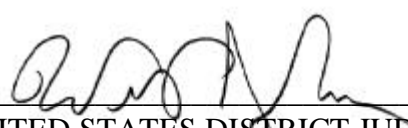
Where a movant does submit evidence in support of summary judgment, the content of substance of that evidence must be admissible. Adams v. American Guarantee and Liability Ins. Co., 233 F.3d 1242, 1246 (10th Cir. 2000). The letters submitted by Plaintiff in support of her motion for summary judgment are not admissible as they have not been authenticated by affidavit. Accordingly, Defendants' Motion to Strike Exhibits A through F will be granted.

Even if the letters were admissible and considered by the Court in ruling on Plaintiff's Motion for Summary Judgment, Plaintiff has failed to show that there is no genuine issue of material fact or that she is entitled to judgment as a matter of law. Accordingly, her Motion for Summary Judgment will be denied.

CONCLUSION

IT IS THEREFORE ORDERED that School Defendants and Defendant Fry's Motion to Strike Exhibits A Through F of Plaintiff's Motion for Summary Judgment [Docket No. 40] is hereby GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment [Docket No. 32] is hereby DENIED.


UNITED STATES DISTRICT JUDGE